



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 5-421 – Food Regulations
Department of Health
September 14, 2006

Summary of the Proposed Regulation

The Board of Health (board) proposes to amend the existing Food Regulations to make them consistent with the 2003 supplement to the 2001 FDA¹ Food Code. Changes include:

1. Restaurants will be required to advise customers of the risks involved in eating raw or partially cooked foods of animal origin.
2. The required hot holding temperature for potentially hazardous foods² will be reduced from 140 °F to 135 °F.
3. A temperature measuring device suitable for measuring temperature of thin masses will be required for measuring temperatures in thin foods.
4. The table of cooking temperature and holding time for some raw animal foods (whole beef roasts and corned beef roasts, pork roasts, and cured pork roasts such as ham) is revised to provide more alternative cooking temperatures.
5. Changes are proposed that involve rewording of the regulations and incorporating what has been in practice for many years into the regulations.

Results of Analysis

There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

¹ FDA: U.S. Food and Drug Administration

² According to 12 VAC 5-421-10, “potentially hazardous food” means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting: 1) the rapid and progressive growth of infectious or toxigenic microorganisms, 2) the growth and toxin production of *Clostridium botulinum*, or 3) in raw shell eggs, the growth of *Salmonella enteritidis*.

Estimated Economic Impact

The Food Regulations (12 VAC 5 – 421) address minimum sanitary standards for operating restaurants in the Commonwealth of Virginia. The current Food Regulations became effective on March 1, 2002 and are based on the 1999 FDA Food Code. The board proposes to amend the Food Regulations to make them consistent with the 2003 supplement to the 2001 FDA Food Code. The proposed regulations will provide minimum sanitary standards that reflect current food science and safety knowledge and will better protect the health and safety of the public.

One of the major proposed changes is the addition of a consumer advisory requirement. Restaurants will be required to advise customers, through either statements on the menu or sign in the establishments, of the risks involved in eating raw or partially cooked foods of animal origin. This requirement will keep consumers informed of the potential risk and help them make appropriate decisions. According to the Department of Health (VDH), most national chain restaurants already have statements such as these on their menus. There may be some small costs to some small restaurants that will have to either revise their menus or post signs to advise consumers of the hazards of consuming raw or partially cooked animal products.

Another proposed change is that the required hot holding temperature for potentially hazardous foods will be reduced from 140 °F to 135 °F. The reduction in the hot holding temperature is supported by food science data indicating that pathogenic bacterial associated with various foodborne illnesses do not multiply rapidly at temperatures of 135 °F or higher. This proposed change will benefit all restaurants with reduced energy costs and potential savings from equipment replacement, while maintaining the safety of the food.

The proposed regulations require that a temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish fillets. This requirement will make sure that the temperature is taken accurately for thin foods to ensure food safety. According to VDH, many of the national chains already use thermocouples which have very thin probes with tip sensors and instant read. And restaurants whose present thermometers are capable of taking temperatures of any thin foods they prepare will not have to purchase additional temperature measuring devices. VDH estimates that

approximately 1,000 to 2,000 restaurants may need to purchase a new temperature measuring device capable of measuring the temperature in thin foods, which costs \$20 to \$200 each. Thus the total estimated costs for this proposed regulatory change may range from \$20,000 to \$400,000 statewide.

The table of cooking temperature and holding time for some animal foods (whole beef roasts and corned beef roasts, pork roasts, and cured pork roasts such as ham) in 12 VAC 5-421-700 is revised to provide more alternative cooking temperatures. Currently the table lists the holding time needed for temperatures between 130 °F to 158 °F with 2 °F increment. The new table will list the holding time for each temperature between 130 °F to 158 °F. This change will likely have a small positive impact on the restaurants with more flexibility and less confusion.

The board also makes changes to the Food Regulations that involve rewording and restructuring of the regulations to make them easier to understand. Some changes place into the regulation what has been the practice in the restaurant industry for many years and as such will have no economic impact. For example, the proposed regulations allow the use of copper and copper alloys in contact with apple butter and molasses ingredients that have a pH below 6 in the preparation of these items provided the contact time is less than 24 hours. According to VDH, the added language has been policy for more than two years and has been a standard practice in southwest Virginia at festivals for many years. Therefore, this proposed change will likely not have any economic impact.

In summary, the proposed regulations will provide the necessary guidance to the restaurant industry that is based on the most current sound science available, which will enhance the safety of the food and protect the health and welfare of the public. The proposed reduction of the required hot holding temperature will benefit the restaurants with energy savings as well as potential savings from equipment replacement. There may be some small costs to some small restaurants that will have to either revise their menus or post signs to advise consumers of the hazards of consuming raw or partially cooked animal products. And approximately 1,000 to 2,000 restaurants may need to purchase a new temperature measuring device for measuring the temperature in thin foods that costs \$20 to \$200 each, with a total of \$20,000 to \$400,000 statewide. Since not all of the costs and benefits from the proposed changes are available, it is not known whether total benefit exceeds total cost.

Businesses and Entities Affected

The proposed regulations affect the approximately 25,000 restaurants in the Commonwealth as well as their patrons.

Localities Particularly Affected

The proposed regulation will not disproportionately affect any specific localities in the Commonwealth.

Projected Impact on Employment

The reduction in the hot holding temperature for potentially hazardous foods from 140 °F to 135 °F will likely reduce costs to the restaurants, which will commensurately increase their profits and may have a positive impact on the number of people employed. On the other hand, approximately 1,000 to 2,000 restaurants may need to purchase a new temperature measuring device that costs \$20 to \$200 each. Some small restaurants will need to revise their menus or post signs to advise consumers of the hazards of consuming raw or partially cooked animal products. These increased costs will commensurately reduce their profits and may have a small negative impact on their employment.

Effects on the Use and Value of Private Property

Restaurants may incur cost savings due to the reduction in the hot holding temperature for potentially hazardous foods from 140 °F to 135 °F, which will commensurately increase their profits and may have a positive impact on the use and value of their property. On the other hand, the proposed regulations will cause an increase in cost for restaurants that need to purchase a new temperature measuring device or to provide new advisory to the customers. These increased costs will commensurately reduce their profits and may have a small negative impact on the use and value of their property.

Small Businesses: Costs and Other Effects

All small restaurants will benefit from the reduced hot holding temperature for potentially hazardous foods from 140 °F to 135 °F with energy savings and potential savings from equipment replacement. Currently there are approximately 25,000 restaurants in the

Commonwealth and about 95 to 100 per cent of them are small businesses.³ Also, approximately 1,000 to 2,000 restaurants may need to purchase a new temperature measuring device capable of measuring the temperature in thin foods, which costs approximately \$20 to \$200 each. Most of these restaurants are small businesses. There may be some small costs to some small restaurants that will have to either revise their menus or post signs to advise consumers of the hazards of consuming raw or partially cooked animal products.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The Food Regulations are proposed to be amended to be consistent with the 2003 supplement to the 2001 FDA Food Code. The proposed regulations will provide minimum sanitary standards that reflect current food science and safety knowledge and will better protect the health and safety of the public. There will be no alternative method that will achieve the same benefit while having a smaller adverse impact.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the

³ Source: VDH.

regulation. The analysis presented above represents DPB's best estimate of these economic impacts.